



Inheritance (Provision for Family and Dependants) Act 1975

1975 CHAPTER 63

3 Matters to which court is to have regard in exercising powers under s. 2.

- (1) Where an application is made for an order under section 2 of this Act, the court shall, in determining whether the disposition of the deceased's estate effected by his will or the law relating to intestacy, or the combination of his will and that law, is such as to make reasonable financial provision for the applicant and, if the court considers that reasonable financial provision has not been made, in determining whether and in what manner it shall exercise its powers under that section, have regard to the following matters, that is to say—
- (a) the financial resources and financial needs which the applicant has or is likely to have in the foreseeable future;
 - (b) the financial resources and financial needs which any other applicant for an order under section 2 of this Act has or is likely to have in the foreseeable future;
 - (c) the financial resources and financial needs which any beneficiary of the estate of the deceased has or is likely to have in the foreseeable future;
 - (d) any obligations and responsibilities which the deceased had towards any applicant for an order under the said section 2 or towards any beneficiary of the estate of the deceased;
 - (e) the size and nature of the net estate of the deceased;
 - (f) any physical or mental disability of any applicant for an order under the said section 2 or any beneficiary of the estate of the deceased;
 - (g) any other matter, including the conduct of the applicant or any other person, which in the circumstances of the case the court may consider relevant.
- (2) [^{F1} This subsection applies, without prejudice to the generality of paragraph (g) of subsection (1) above, where an application for an order under section 2 of this Act is made by virtue of section 1(1)(a) or (b) of this Act.]

The court shall, in addition to the matters specifically mentioned in paragraphs (a) to (f) of that subsection, have regard to—

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- (a) the age of the applicant and the duration of the marriage [^{F2}or civil partnership];
- (b) the contribution made by the applicant to the welfare of the family of the deceased, including any contribution made by looking after the home or caring for the family.

^{F3} . . . In the case of an application by the wife or husband of the deceased, the court shall also, unless at the date of death a [^{F4}judicial separation order] was in force and the separation was continuing, have regard to the provision which the applicant might reasonably have expected to receive if on the day on which the deceased died the marriage, instead of being terminated by death, had been terminated by a [^{F5}divorce order][^{F6}]; but nothing requires the court to treat such provision as setting an upper or lower limit on the provision which may be made by an order under section 2.]

[^{F7}In the case of an application by the civil partner of the deceased, the court shall also, unless at the date of the death a separation order under Chapter 2 of Part 2 of the Civil Partnership Act 2004 was in force and the separation was continuing, have regard to the provision which the applicant might reasonably have expected to receive if on the day on which the deceased died the civil partnership, instead of being terminated by death, had been terminated by a dissolution order [^{F6}]; but nothing requires the court to treat such provision as setting an upper or lower limit on the provision which may be made by an order under section 2.]]

[^{F8}(2A) Without prejudice to the generality of paragraph (g) of subsection (1) above, where an application for an order under section 2 of this Act is made by virtue of section 1(1)(ba) of this Act, the court shall, in addition to the matters specifically mentioned in paragraphs (a) to (f) of that subsection, have regard to—

- (a) the age of the applicant and the length of the period during which the applicant lived [^{F9}in the same household as the deceased as if the applicant and the deceased were a married couple or civil partners];
- (b) the contribution made by the applicant to the welfare of the family of the deceased, including any contribution made by looking after the home or caring for the family.]

(3) Without prejudice to the generality of paragraph (g) of subsection (1) above, where an application for an order under section 2 of this Act is made by virtue of section 1(1)(c) or 1(1)(d) of this Act, the court shall, in addition to the matters specifically mentioned in paragraphs (a) to (f) of that subsection, have regard to the manner in which the applicant was being or in which he might expect to be educated or trained, and where the application is made by virtue of section 1(1)(d) the court shall also have regard—

- [^{F10}(a) to whether the deceased maintained the applicant and, if so, to the length of time for which and basis on which the deceased did so, and to the extent of the contribution made by way of maintenance;
- (aa) to whether and, if so, to what extent the deceased assumed responsibility for the maintenance of the applicant;]
- (b) to whether in [^{F11}maintaining or assuming responsibility for maintaining the applicant] the deceased did so knowing that the applicant was not his own child;
- (c) to the liability of any other person to maintain the applicant.

(4) Without prejudice to the generality of paragraph (g) of subsection (1) above, where an application for an order under section 2 of this Act is made by virtue of section 1(1)

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- (e) of this Act, the court shall, in addition to the matters specifically mentioned in paragraphs (a) to (f) of that subsection, have [F12]regard—
- (a) to the length of time for which and basis on which the deceased maintained the applicant, and to the extent of the contribution made by way of maintenance;
 - (b) to whether and, if so, to what extent the deceased assumed responsibility for the maintenance of the applicant.]
- (5) In considering the matters to which the court is required to have regard under this section, the court shall take into account the facts as known to the court at the date of the hearing.
- (6) In considering the financial resources of any person for the purposes of this section the court shall take into account his earning capacity and in considering the financial needs of any person for the purposes of this section the court shall take into account his financial obligations and responsibilities.

Textual Amendments

- F1** Words in s. 3(2) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 71, 263(2), **Sch. 4 para. 17(2)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F2** Words in s. 3(2)(a) inserted, and the words from "the court shall, in addition" to the end of s. 3(2)(b) become the second sentence of the subsection, (5.12.2005) by virtue of [Civil Partnership Act 2004 \(c. 33\)](#), ss. 71, 263(2), **Sch. 4 para. 17(3)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F3** Word in s. 3(2) repealed, and the words following it become the third sentence of the subsection, (5.12.2005) by virtue of [Civil Partnership Act 2004 \(c. 33\)](#), ss. 71, 261(4), 263(2), **Sch. 4 para. 17(4)**, **Sch. 30**; S.I. 2005/3175, **art. 2(1)(6)**, Sch. 1
- F4** Words in s. 3(2) substituted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), **Sch. para. 44(3)(a)**; S.I. 2022/283, reg. 2
- F5** Words in s. 3(2) substituted (6.4.2022) by [Divorce, Dissolution and Separation Act 2020 \(c. 11\)](#), s. 8(1)(8), **Sch. para. 44(3)(b)**; S.I. 2022/283, reg. 2
- F6** Words in s. 3(2) inserted (1.10.2014) by [Inheritance and Trustees' Powers Act 2014 \(c. 16\)](#), s. 12(2), **Sch. 2 para. 5(2)** (with s. 12(4)); S.I. 2014/2039, art. 2
- F7** Words in s. 3(2) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 71, 263(2), **Sch. 4 para. 17(5)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F8** S. 3(2A) inserted (8.11.1995) by 1995 c. 41, **s. 2(4)**
- F9** Words in s. 3(2A)(a) substituted (2.12.2019) by [The Civil Partnership \(Opposite-sex Couples\) Regulations 2019 \(S.I. 2019/1458\)](#), reg. 1(2), **Sch. 3 para. 3(3)**
- F10** S. 3(3)(a)(aa) substituted for s. 3(3)(a) (1.10.2014) by [Inheritance and Trustees' Powers Act 2014 \(c. 16\)](#), s. 12(2), **Sch. 2 para. 5(3)(a)** (with s. 12(4)); S.I. 2014/2039, art. 2
- F11** Words in s. 3(3)(b) substituted (1.10.2014) by [Inheritance and Trustees' Powers Act 2014 \(c. 16\)](#), s. 12(2), **Sch. 2 para. 5(3)(b)** (with s. 12(4)); S.I. 2014/2039, art. 2
- F12** Words in s. 3(4) substituted (1.10.2014) by [Inheritance and Trustees' Powers Act 2014 \(c. 16\)](#), s. 12(2), **Sch. 2 para. 5(4)** (with s. 12(4)); S.I. 2014/2039, art. 2

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Changes and effects yet to be applied to :

- s. 3(2) amended (prosp.) by [1996 c. 27 s. 66\(1\)Sch. 8 Pt. 1 para. 27\(3\)](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 25 (defns. of "former wife" and "former husband") amended (prosp.) by [1996 c. 27 s. 66\(1\)Sch. 8 Pt. 1 para. 27\(8\)](#)